

Leta E. Gorman, OSB #984015
E-Mail: leta.gorman@bullivant.com
Bullivant Houser Bailey PC
300 Pioneer Tower
888 SW Fifth Avenue
Portland, Oregon 97204-2089
Telephone: 503.228.6351
Facsimile: 503.295.0915
Attorneys for Brenntag Pacific, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

RTT CORPORATION, an Oregon
corporation, doing business as Rocky
Mountain Products,

Plaintiff,

v.

BRENNTAG PACIFIC, INC., a Delaware
corporation,

Defendant.

Civil No.: 08-CV-6291-AA

**DEFENDANT BRENNTAG PACIFIC,
INC.'S MOTIONS FOR PARTIAL
SUMMARY JUDGMENT**

Oral Argument Requested

I. LR 7.1 COMPLIANCE

Pursuant to LR 7.1, (a)(1)(A), the undersigned certifies that she has conferred with counsel for plaintiff RTT Corporation through a telephone conference to try to resolve the dispute that is the subject of these motions. The parties have been unable to resolve the matters at this time.

II. QUESTIONS TO BE DECIDED

1. Should the Court recharacterize RTT's breach of contract and warranty claims as product liability claims under Oregon law and, if so, should the claims be dismissed on grounds that RTT's losses are purely economic?
2. Do the Terms and Conditions included with Brenntag's Bills of Lading and invoices set forth the terms of the parties' contract for the purchase and sale of goods?
3. Is the Limitations of Liability provision in the Terms and Conditions enforceable?

III. MOTIONS

Pursuant to Fed R Civ P 56(a), Brenntag respectfully moves this Court for partial summary judgment¹ in its favor on the grounds that there is no genuine issue of any material fact and Brenntag is entitled to judgment declaring that, as a matter of law:

- (1) RTT's claims against Brenntag are product liability claims and, because RTT seeks only economic damages, its claims are dismissed.
- (2) The Terms and Conditions apply to the parties' purchase and sale of goods, including sorbitol.
- (3) The Limitations of Liability clause contained in the Terms and Conditions is valid and enforceable.

///

///

///

///

///

///

¹ Partial summary judgment is requested because even if the Court disposes of all of RTT's claims against Brenntag, Brenntag's counterclaim against RTT remains.

In support of its motions, Brenntag relies on the simultaneously filed Concise Statement of Undisputed Material Facts, the Memorandum in Support of Brenntag's Motions for Partial Summary Judgment, the Affidavit of Sam DeBellis, Jr., and the entire court file herein.

DATED this 12th day of February, 2009.

BULLIVANT HOUSER BAILEY PC

BY /s/ Leta E. Gorman

Leta E. Gorman

OSB #984015

Telephone: 503.228.6351

Attorneys for Brenntag Pacific, Inc.

11111396.1